IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1977

CHAD E. CHAPMAN,
Petitioner,

v

PEOPLE OF THE
STATE OF MICHIGAN,
Respondent.

File No. 77-467

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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OPINION BELOW

Respondent accepts Petitioner's statement of opinion below.

STATEMENT OF JURISDICTION

Respondent accepts Petitioner's statement of jurisdiction.

QUESTION PRESENTED

Respondent would state the issue for consideration as follows: whether evidence inadvertently discovered and seized by firemen in the course of extinguishing a fire violated the Fourth Amendment's proscription of unreasonable searches and seizures.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

CHAD E. CHAPMAN, Petitioner, v PEOPLE OF THE STATE OF MICHIGAN, Respondent.	File No. _____

STATEMENT OF FACTS

Respondent accepts the following statement of facts as set forth in the Court of Appeals Opinion:

> The record discloses that on December 23, 1974, at approximately 11:45 p.m., the Onaway Volunteer Fire Department was notified of a fire at the home of defendant. Defendant's house was ablaze when they arrived, and the volunteer firemen spent the next 15 minutes or so in bringing the fire under control.
>
> The blaze was apparently limited to the main part of the house. When the fire was substantially under control, the fire chief, a truck driver by profession, entered a breezeway which connected the house to a garage in order to open some windows and doors to vent the heavy accumulation of smoke. His object was to permit the firemen to see what they were doing when they entered the house to mop up.

The chief entered the garage looking for another door to open. In the garage, he observed one deer hanging on a stringer, plus a doe head and a buck lying on some cement blocks. Suspecting that the deer were possessed illegally, he called one of the volunteer firemen, a Mr. Badder, and told him to keep everyone out of the garage.

Mr. Badder, a part-time police officer as well as a volunteer fireman, complied with this directive and stood at the door to the garage. While standing there, he observed the deer in the garage.

It appears that Badder's sole purpose in being on the premises was to help put out the fire and that he went and stood by the garage door pursuant to the order of the fire chief only in furtherance of this firefighting function. There has been no suggestion that Badder's purpose in being on the scene was to further any criminal investigation or that he had any reason to suspect that illegal venison was in defendant's house.

While Badder secured the garage and the other firemen finished mopping up the fire, the fire chief sent word to the game warden. A State of Michigan conservation officer received the report that illegal deer had been found in defendant's house, drove to Onaway, and picked up the deer.

People v *Chad E. Chapman*, 78 Mich App 547, 549-550; 252 NW2d 511 (1977), [Petitioner's Appendix A, p. 27-29]

REASONS FOR DENYING THE WRIT

Petitioner contends that three deer, or parts thereof, should have been suppressed as the result of an illegal search and seizure.

It is clear that the Fourth Amendment, recognizing that an individual's right to privacy must be maintained, protects such individuals from unreasonable searches and seizures. As stated in *Coolidge* v *New Hampshire*, 403 US 443; 91 S Ct 2022; 29 L Ed 2d 564 (1971), the standard constitutional doctrine is that a search conducted without prior approval from an independent magistrate is per se unreasonable under the Fourth Amendment. This doctrine, however, is subject to a few narrowly-described exceptions.

The "plain view" doctrine is one of these exceptions and was fully explained by Justice Stewart in *Coolidge, supra*, as follows:

> What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification—whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or *some other legitimate reason for being present unconnected with a search directed against the accused*—and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. 403 US at 466; 91 S Ct at 2038 (Emphasis added)

In *Harris* v *United States*, 390 US 234; 88 S Ct 992; 18 L Ed 2d 1067 (1968), this court recognized the "plain view" doctrine as a well-established exception in the law of search and seizure:

> It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence. *Ker* v *California*, 374 US 23, 42-43, 10 L Ed 2d 726, 743; 83 S Ct 1623 (1963); *United States* v *Lee*, 257 US 559; 71 L Ed 1202, 47 S Ct 746 (1927); *Hester* v *United States*, 265 US 57; 68 L Ed 898; 44 S Ct 445 (1924) 390 US at 236.

In the present case, the testimony indicates that the discovery of the deer was made by a fireman while acting in his official capacity, extinguishing a blaze at the petitioner's residence. Clearly the firemen had justification for their intrusion and were lawfully on the premises.

The discovery was inadvertent during the discharge of their duties. Standard procedure required the airing of the house to facilitate safe and efficient fire fighting. The fireman's entry into the connected building was to alleviate the smoke build-up in the house and allow the firemen to continue in their efforts to extinguish the blaze.

Furthermore, the deer were immediately recognized as contraband and seized under the direction of the fire chief. The fireman exercised dominion over the deer, guarding the door and thus preventing their removal.

The petitioner's contention that his Fourth Amendment rights were violated is wholly unsupported by the facts of this encounter. Further, the seizure of the evidence clearly falls within the "plain view" doctrine exception as outlined by *Harris, supra,* and *Coolidge, supra.*

The trial court properly denied Petitioner's motion to suppress and the Michigan Court of Appeals correctly affirmed Petitioner's conviction.

RELIEF

WHEREFORE, for all the foregoing reasons, Respondent respectfully requests this Honorable Court to deny Petitioner's request for a Writ of Certiorari.

Respectfully submitted,

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Dated: October 20, 1977

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

Thomas C. Nelson, being first duly sworn, deposes and says that he has read the foregoing, and it is true to the best of his knowledge and belief.

THOMAS C. NELSON /s/
Assistant Attorney General

Subscribed and sworn to before me
this 20th day of October, 1977.

CHERYL A. WORRALL /s/
Cheryl A. Worrall, Notary Public
Clinton County, Michigan
(Acting in Ingham)
My commission expires: 8/16/80